PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Kent and Jill M. Lutes
DOCKET NO.: 05-02082.001-R-1
PARCEL NO.: 18-005-101-00

The parties of record before the Property Tax Appeal Board are Kent and Jill M. Lutes, the appellants, and the Jo Daviess County Board of Review.

The subject property consists of a .98-acre (42,680 square foot) parcel in Apple Canyon Lake Subdivision. The property has been improved with a one-story frame constructed dwelling built in 2004 and containing 1,275 square feet of living area. Features include a full, unfinished basement, two bathrooms, and an attached ½ car "garage" of 261 square feet of building area. The property also features a 423 square foot wood deck.

The appellant Jill M. Lutes appeared before the Property Tax Appeal Board on behalf of the appellants arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of that overvaluation argument, the appellants presented two appraisal reports and also set forth in the Residential Appeal petition that the subject land only was purchased in March 2004 for $55,000 and that the dwelling was thereafter erected for $95,000 with the appellants acting as general contractor for an estimated additional value of $20,000. A certificate of occupancy was issued for the residence on February 3, 2005 with a notation "numerous finish details" to be completed.

Additional documentation had been presented also and testimony at hearing were provided to further support the appeal. Included in the evidence were twelve color photographs depicting the interior and exterior of the subject dwelling along with notations of an unfinished skylight opening, unfinished interior painting, second-hand kitchen cabinetry, an unfinished basement, unfinished shower in a bathroom, and temporary front steps with stepping stones, no sidewalk. Also included was data on the 2005 insured value of the dwelling of $146,000. Also included in the evidence was a small carpet sample to support the contention in the photographs and appellant's testimony at hearing that foam-backed carpeting was purchased for $0.30 per square yard and installed

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds *a reduction* in the assessment of the property as established by the **Jo Daviess** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$	18,260
IMPR.:	$	47,485
TOTAL:	$	65,745

Subject only to the State multiplier as applicable.

PTAB/cck/6-9

in the dwelling. While the assessment records include a 266 square foot one-car basement garage, appellant testified the property actually just has a glorified shed in the basement which is 16 feet deep and utilized to store lawn equipment. She further testified this "garage" is not accessible with a vehicle due to the slope of the land, deck posts, and nearby trees. Appellant further testified that subsequent to the filing of this appeal, the subject property has been placed on the market due in part to exorbitant property taxes.

As to the appraisal evidence, neither appraiser was present at the hearing to testify or be cross-examined regarding their respective appraisals, the adjustments made, and/or the final opinion(s) of value.

The first appraisal presented as indicated by appellants was prepared for bank mortgage purposes and was "subject to completion per plans and specifications." The appraiser described the subject property as a .98-acre parcel with a new one-story cedar exterior constructed dwelling in average/good condition with 1,274 square feet of living area, an unfinished walkout basement, central air conditioning, a deck, and appliances of a refrigerator, range with oven, dishwasher and fan. The appraiser noted no garage for the subject. It must be noted that based upon the table of contents for this appraisal which was filed, not all pages of the appraisal were provided; the contents references 17 pages and the submission consists of 9 pages, one of which is a duplicate and two of which have been copied so as to cut-off the left margin text. It appears the appraiser performed both a cost and comparable sales approach in preparing this appraisal.

In the cost approach, the appraiser estimated a site value of $55,000. Next, the appraiser estimated reproduction cost-new of the improvements based upon 1,274 square feet at $65.99 per square foot and also at $18.77 per square foot were calculated; then the appraiser made a reference to "deck-appliances" for $9,000. Both the dwelling and "deck/appliances" resulted in a total estimated cost new of $116,984. No depreciation was calculated. The appraiser next indicated an "as-is" value of site improvements of $13,000. Once the land value was added back, the indicated value by the cost approach was $184,984 or $145.09 per square foot of living area, including land. The appraisal report noted that comments on the cost approach could be found in the "attached addenda," but a review of the pages submitted failed to reveal any further details on the appraiser's cost approach methodology.

In the sales comparison approach, the appraiser presented three comparable properties located from .17 to 1.21 miles from the subject property. The parcels ranged in size from .38 to .45 acres. Two comparables were described as one-story dwellings and the third was described as "cabin." Each was of frame exterior construction and ranged in age from new to 25 years old. Each comparable had a full basement, two of which included finished

areas. Each comparable had central air conditioning, a one or two-car attached garage, and a deck. One comparable was said to have a wood stove. Similar appliances were noted for two of the three comparables. The comparable dwellings ranged in size from 1,058 to 1,237 square feet of living area. These comparables sold between September 2003 and April 2004 for prices ranging from $145,450 to $159,900 or from $125.30 to $137.48 per square foot of living area, including land. The appraiser made various adjustments to the comparables for land size, condition, living area square footage, basement finish, garage area and appliances where necessary. After adjustments, the appraiser concluded sales prices ranging from $171,510 to $176,870 or from $140.90 to $162.11 per square foot of living area, including land. The appraiser estimated a market value for the subject by the sales comparison approach of $175,000 or $137.25 per square foot of living area, including land.

The appraiser's final reconciliation of the two approaches to value are said to be in addenda which were not supplied. The appraisal report states a final opinion of value as of June 9, 2004 of $175,000 or $137.25 per square foot of living area, including land.

The appellants' second appraisal report was prepared after completion of the subject dwelling. Appellant testified that this appraisal was required to meet an 80% minimum value required by the bank to avoid mortgage insurance; upon meeting with the appraiser, he purportedly asked "how much do you need it to be" to which the appellants responded $185,000.

This appraiser described the subject as a new one-story frame dwelling of 1,300 square feet of living area with an unfinished walkout basement, 1.75 bathrooms, a built-in one-car garage, a wood deck and no central air conditioning. The appraiser utilized both the cost and comparable sales approaches to estimate a fair market value.

In the cost approach, the appraiser estimated the land of 1.02 acres to be $60,000. Utilizing the Marshall and Swift Cost Manuals, the appraiser estimated the dwelling and basement replacement cost new plus the value of $3,315 for a wood deck for a total estimated cost new of $111,670. No depreciation was calculated. "As-is" value of site improvement was $12,000 was added for a total indicated value under the cost approach of $184,000, rounded, or $144.31 per square foot of living area, including land.

In the sales comparison approach, the appraiser examined four sales of properties located in the same development with land areas ranging from .48 to .60 acres. The comparables were described as one one-story and three "expanded ranch" designs of frame exterior construction ranging in age from new to 12 years old. Each comparable has a basement, three of which were walkout style and two of those were finished. Each comparable has central air conditioning, a one or two-car garage, and a deck.

Three comparables also have a fireplace. The comparables range in size from 1,150 to 1,368 square feet of living area. These properties sold between April 2004 and September 2004 for prices ranging from $140,750 to $205,000 or from $114.25 to $174.32 per square foot of living area, including land. The appraiser then made adjustments to the comparables for differences such as land area square footage, age, condition, room count, living area square footage, basement design, basement finish, central air conditioning, garage area, and fireplaces. After adjustments, the appraiser found adjusted sales prices ranging from $186,000 to $214,200 or from $137.43 to $182.14 per square foot of living area, including land. In the sales comparison approach, the appraiser estimated a market value for the subject of $188,000 or $147.45 per square foot of living area, including land.

In reconciling the two approaches to value, the appraiser noted the sales approach was the most indicative of value, but the cost approach was also supportive as a check. The appraiser noted most weight was given to sales comparable #2 as it was most similar to the subject property. Based upon the data, the appraiser estimated a market value for the subject as of February 25, 2005 of $188,000 or $147.45 per square foot of living area including land, based upon 1,275 square feet of living area.

Based on these comparisons, the appellants felt that the land assessment should be reduced to $18,333 and the improvement assessment should be reduced to $38,995 for a total reduced assessment of $57,328. The proposed reduced assessment would reflect an estimated fair a market value based on the Jo Daviess County 2005 three-year median level of assessments of 33.20% of $172,675 or $135.43 per square foot of living area, including land.

The Board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessment of $68,643 was disclosed. Based on its assessment and the 2005 three-year median level of assessments in Jo Daviess County of 33.20%, the subject has an estimated fair market value of $206,756 or $162.29 per square foot of living area, including land. The board of review pointed out that due to the new construction, the subject dwelling was placed on the assessment books as of January 1, 2005 as 95% complete and then in September 2005 as 100% complete.

A factual dispute concerning the subject property must be addressed initially. As set forth above, appellant testified that there is essentially a shed/storage area in the basement that is accessible from the rear of the building, but not accessible to a car and therefore the subject was incorrectly assessed for a one-car basement garage. The board of review's representative at the hearing affirmatively stated that there is no assessment for a garage on the subject property, despite repeated grid analyses of the subject property listing "basement-1 car" for garage or carport amenity. On the property record card for the subject property at "basement garage" it is also written "266 [square feet]" and "1C" is circled. The

representative explained that the property is simply assessed for a basement under the dwelling with no further addition.

In its evidence, the board of review included a letter outlining both its response to the appellants' evidence and its own evidence. In that letter, the board of review noted the subject parcel is in a bay area of Apple Canyon Lake. While the parcel does not reach directly to the lake, there is a green area between the property line and the lake which is controlled by the Apple Canyon Lake Property Owners Association (see Exhibit A aerial photograph of subject). The board of review further described this subdivision as a resort development with amenities such as a lake, marina, golf course, hiking trails, clubhouse and pool. The board noted the subject property "is not owner occupied."

In support of the subject's estimated fair market value, the board of review presented Exhibit G with a grid analysis of five comparable sales. The properties ranged in size from 12,560 to 23,318 square feet of land area and were located in Apple Canyon Lake subdivision. The parcels were improved with one-story frame dwellings built between 1977 and 2002. Features included a garage, a fireplace, a deck, and a basement ranging in size from 816 to 1,568 square feet of building area, two of which included finished areas. Three comparables had central air conditioning. The dwellings ranged in size from 816 to 1,568 square feet of living area and sold between April 2004 and October 2005 for prices ranging from $205,000 to $238,000 or from $144.77 to $275.74 per square foot of living area, including land.

In response to the appellants' evidence, the board of review set forth what it viewed as deficiencies in the two appraisal reports presented. As to the first appraisal (see Exhibit B), the board of review noted the valuation date was as of the start of construction of the dwelling. Also, no adjustment was made as to the number of bathrooms for comparable sale #1; no adjustment was made for age as to comparables #2 and #3 despite their ages of 25 and 9 years, respectively. The board of review also pointed out that despite varying land sizes, a uniform adjustment was made for land area as to each of the comparables.

Regarding the second appraisal, the board of review set forth various discrepancies within the report (see Exhibit C) such as inconsistent basement finish adjustments for sales comparables #1 and #3. Likewise, adjustments for garage size were inconsistent between comparables #2 and #3 and then comparable #4. Land size area adjustments also appeared to be inconsistent.

As Exhibit E, the board of review provided aerial photographs and property record cards for the comparable sales set forth in both appraisals. A review of the photographs reveals that two or three properties appear to have "green space" between the property line and a body of water. Based upon the photographs, the board of review wrote, "the appellants' lot should be worth more than the $20,000 adjustment that was made in the

appraisals." In further support of this contention, the board of review presented Exhibit F consisting of six vacant land sales which were described as comparable to the subject based on proximity to "the lake"; one of the comparables sold twice in the same year.[1] The parcels ranged in size from 14,664 to 19,600 square feet and sold between May 2004 and June 2005 for prices ranging from $45,000 to $112,000 or from $2.40 to $6.22 per square foot of land area. The board of review also noted that the subject parcel of 42,680 square feet sold in March 2004 for $55,000 or $1.29 per square foot of land area. Based on the comparable land sales data, the board of review contended that adjustments for the lot sizes should have been between $40,000 and $50,000.

As Exhibit H, the board of review presented two grid analyses, each reflecting the comparable sales data from the appellants' two separate appraisals. A close review of the grid in comparison with the appraisals reflects slight variations from one to the other, but nothing was noted in the board of review's evidence as a particularly significant error in the sales data.

Based on the foregoing data, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant noted that the "green area" between the property line and the lake which was referred to by the board of review is approximately 100 feet deep and due to the woods and slope of the property, the dwelling has no view of the lake nor could a boat dock be installed in that area. Appellant further contested the challenges made to the adjustments for basement finish and lot size by noting that adjustments were made by the appraisers. In response to Exhibit F and the board of review's presentation of vacant land sales, the appellant contended that no consideration is given by the assessor as to whether a parcel does or does not have a boat dock; appellant further contended that each sale referenced by the board of review had a "transferable boat dock."[2] Appellant further testified that there is no boat dock for the subject property and appellants have been on a list for five years to lease a boat dock.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellants argued that the subject's assessment was not reflective of market value. When market value is the basis of the appeal, the value of the property must be proved by a

[1] In May 2004 for $62,000 and in November 2004 for $112,000.

[2] In Exhibit F, the board of review included the Real Estate Transfer Declaration sheets for each vacant land sale. In reviewing those documents, the Property Tax Appeal Board notes that one property which sold in April 2005 for $70,000 in total included $5,000 for "personal property" in the purchase price, which may be one of these boat docks referenced by appellant. In examining the land value only, the figure of $65,000 was utilized resulting in a sale price of $3.47 per square foot of land area for this property.

preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Board finds this burden of proof has been met and a reduction in the subject's land assessment is warranted; as to the improvement assessment, the Board finds this burden of proof has not been met and a reduction in the subject's improvement assessment is not warranted.

In this matter, the appellants have presented a sale price of the land, two appraisals of the property, and data on recent construction costs. Each piece of evidence will be analyzed in turn.

Case law is clear that a contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

In this matter, there is a sale price of the subject vacant land for $55,000 or $1.29 per square foot of land area in March 2004, a mere nine months prior to the assessment date of January 1, 2005. No challenge was made by the board of review that the sale of the subject parcel was not an arm's-length transaction between a willing buyer and a willing seller, on the open market. However, for 2005 the land was assessed at $21,158 or, applying the three-year median level of assessments, the land was said to have an estimated fair market value of $63,729 or $1.49 per square foot of land area, which is higher than the recent purchase price of the vacant land. In the cost approach in the appraisals, the appraisers estimated a land value of $55,000 and $60,000, respectively, which also supports a reduction in the land assessment.

To the extent that vacant land sales comparables were presented by the board of review to support the assessment, the Property Tax Appeal Board finds the comparable sales concerned significantly smaller parcels of land which sold for prices ranging from $2.40 to $6.22 per square foot of land area. It is evident that the sales uniformly reflected a higher price per square foot for smaller land parcels. Thus, based primarily on the difference in land area, the Property Tax Appeal Board finds that these vacant land sales fail to support the subject's 2005

land assessment. Based on the record evidence and the un-refuted recent sale of the subject vacant parcel, the Property Tax Appeal Board finds that a reduction in the subject's land assessment is warranted. Having found that the best evidence in the record of the fair market value of the subject land as of January 1, 2005 is it's March 2004 purchase price of $55,000, the three-year median level of assessments for Jo Daviess County of 33.20% shall apply to the land assessment.

Turning now to the appraisals, in the absence of either of the appraisers at the hearing to address questions as to the selection of the comparables and/or the adjustments made to the comparables in order to arrive at the value conclusion(s) set forth in the respective appraisals, the Property Tax Appeal Board will consider only the appraisals' raw sales data in its analysis and give no weight to the final value conclusions made by the appraisers. The Board finds the appraisal reports are tantamount to hearsay. In challenging this appraisal evidence, the board of review in its evidence properly pointed out what it deemed to be inconsistencies and/or discrepancies in the adjustments set forth in the two appraisal reports. Questions as to the adjustment methodology were not answered without the presence of the appraisers at the hearing. Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1971). In the absence of an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the appraisal conclusion(s) of an estimated market value of the subject as of June 2004 of $175,000 and as of February 2005 of $188,000, to have diminished weight and credibility such that the opinion(s) of value have been significantly diminished and cannot be deemed conclusive as to value of the subject property.

Turning now to the comparable sales in the record, the parties provided sales data on twelve suggested comparable sales when considering the raw sales data presented in the appellants' two appraisals and the board of review's Exhibit G. It is noteworthy that while the board of review was critical of the first appraiser's use of both 9 and 25 year old dwellings without accounting for an age adjustment, in its presentation of comparable sales in a grid analysis the board of review presented comparables #3 and #4, dwellings that were 26 and 28 years old, respectively. The Board recognizes that the board of review chose comparables #3 and #4 because they were "green area" lots like the subject, however, as noted by the board of review in the criticisms of the appraisal report, adjustments must be considered for the dwelling age.

As to the first appraiser's three sales comparables, the Board finds that comparables #2 and #3 are dissimilar to the subject in age and comparable #3 having sold in September 2003 is also a bit

distant in time for a valuation date as of January 1, 2005. For these reasons, those comparables will be given reduced weight in the Board's analysis. Likewise, as to the second appraiser's four comparable sales, comparable #3 being a 12 year-old dwelling will be given less weight in the Board's analysis. As noted above, the board of review's suggested comparables #3 and #4 shall be given less weight in the analysis due to the 26 and 28 year-old ages of the respective dwellings.

After considering the differences, the Board finds the remaining seven sales comparables to be most similar to the subject dwelling in age, style, exterior construction, size, amenities, and location, although each comparable had at least a one-car garage and central air conditioning, neither of which are present in the subject. On the other hand, the subject has an unfinished walkout basement which, based on the data provided, only two of the seven comparables have exposed basements. These seven properties had unadjusted sale prices ranging from $140,750 to $238,000 or from $114.25 to $184.06 per square foot of living area, including land. Based on its assessment and the 2005 three-year median level of assessments in Jo Daviess County of 33.20%, the subject has an estimated fair market value of $206,756 or $162.29 per square foot of living area, including land, which is within the range of the comparables.

Additional evidence of the subject dwelling's market value can be considered from the recent construction data submitted by the appellants. On the Residential Appeal petition, appellants reported expending $95,000 for the total cost of the building, including contractor's fees, architectural or engineering fees, landscaping of the homesite, and/or building permits. Contrary to the instructions on the appeal form, the appellants did not supply a Contractor's Affidavit or a written summary of the total cost, but the appellants did provide three Sworn Owner's Statements made for a title insurance company reflecting amounts drawn to pay contractors; the totals reflected on those three documents were approximately $79,000. Appellants further reported having acted as their own general contractor for the construction with an estimated value of $20,000. Lastly appellants reported that no non-compensated labor was performed. Thus, as to the construction costs, on the appeal form the appellants reported a total value of $105,000 or $82.35 per square foot of living area, to construct the dwelling. The Board also recognizes that in the cost approaches to value performed by each of the appellants' appraisers, the first appraiser estimated the cost new of the improvements to be $116,984 or $91.75 per square foot of living area and the second appraiser estimated the cost new of the improvements to be $111,670 or $87.58 per square foot of living area. From the foregoing data, the Property Tax Appeal Board concludes that the actual recent construction costs for the subject property appear to be slightly low and thus, the Board will give those purported actual cost statements diminished weight in its analysis of the market value of the improvements. For 2005, the improvement has an assessment of $47,485 or an

estimated market value of approximately $143,027 or $112.18 per square foot of living area.

After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment reflects an estimated fair market value which is well within the range established by these most similar comparable sales contained in the record and the cost estimates prepared by two appraisers. Therefore, the appellants have failed to demonstrate overvaluation by a preponderance of the evidence as to the improvement assessment and a reduction is not warranted for the improvement assessment based on the evidence presented.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: June 19, 2009

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.